

VERMONT LABOR RELATIONS BOARD

Petition of the Vermont	)	
State Employees' Association	)	
Inc., re: Separate Bargain-	)	DOCKET NO. 81-25
ing Unit for Community	)	
Correctional Center Employees	)	

Findings of Fact, Opinion, and Order

On May 5, 1981, the Vermont State Employees' Association, Inc. ("VSEA") filed a petition with the Vermont Labor Relations Board for formation of a separate bargaining unit consisting of employees of the six community correctional centers of the State of Vermont who are now included in the Non-Management and Supervisory Units. The petition was accompanied by signed requests of not less than 30 percent of the employees for the creation of the new unit. On July 16, 1981, the State filed a response in opposition to the petition.

A hearing was held before the full Board on January 14, 1982. VSEA was represented by its counsel, Michael Zimmerman. Scott Cameron, Assistant Attorney General, represented the State. At the hearing and subsequent to the hearing, the parties stipulated to various facts. Requested Findings of Fact and Memoranda of Law were filed by the VSEA and the State on February 1, 1982, and February 11, 1982, respectively.

### Findings of Fact

1. State employees are organized into four bargaining units: Non-Management, Supervisory, Liquor Control, and State Police. VSEA represents employees in all four bargaining units. The number of employees in each unit is as follows:

<u>Unit</u>	<u>Number of Employees</u>
Non-Management	5,000 (plus)
Supervisory	249-485 (?)
Liquor Control	84 (approximately)
State Police	<u>241</u> (approximately)
TOTAL	5,888 (approximately)

2. The proposed unit consists of all employees of the State's six correctional institutions (Chittenden Community Correctional Center, St. Johnsbury Community Correctional Center, St. Albans Correctional Facility, Rutland Community Correctional Center, Woodstock Community Correctional Center, Windsor Residential Treatment Facility) who are now included in the Non-Management and Supervisory Units, approximately 270 employees.

3. The proposed unit consists of approximately 240 "on-line" and 30 "non-line" employees. For the purposes of this case, "on-line" refers to those employees whose work is directly concerned with the security and/or rehabilitation of the prison population (i.e. Security and Operations Supervisors, Shift Supervisors, Correctional Officers, C, B, and A, Casework Supervisors, Caseworkers, Correctional

Instructors, Recreation Supervisors, Volunteer Coordinators, and Correctional Foremen). "Non-line" refers to those employees who provide administrative services to on-line employees. (Administrative Assistant A, Typists A, B and C, Accountant Clerk A, Stenographers B, C, Cooks B, C, Nurses, and Infirmary Attendants).

4. Some aspects of the on-line correctional employees' working conditions are:

(a) Danger: There is constant danger at the workplace. Employees are not armed (with the exception of perimeter guards at St. Albans who have shotguns). Inmates are often hostile to employees, and many are dangerous. There is at least one assault of an on-line employee each day in Vermont. The danger is amplified by the understaffing common throughout the State.

(b) Stress: Correctional employees have a high rate of stress due to the nature of their work. This results in a high incidence of stress-related disorders such as alcoholism, and family problems, and also may cause the employee to be tense and angry on the job.

(c) Turnover: Nationwide, turnover among correctional officers is between 45 percent to 55 percent per year. In Vermont, the turnover rate is between 75 percent and 80 percent. The reasons for that high rate of turnover are the threat of injury, the stress of the job, the lack of training, and the relatively low pay.

(d) Short Staffing: Due to a high rate of turnover and a failure of the State to fund more positions, correctional centers are understaffed. At the Chittenden Community Correctional Center, for example, which was originally built to house 80-85 inmates, there are now about 150 inmates. The number of staff members has not changed, however. That is due, in part, to the fact that staffing is determined by the number of posts to be manned, rather than the number of inmates.

(e) Overtime: On-line employees are on duty 24 hours a day, seven days a week; working either the first, second or third shifts. Because of the shortage of personnel, it is common for on-line correctional employees to work 16 hours a day, and on short notice. This kind of schedule is harmful to family life and is dangerous because of the fatigue to which the employee is subjected.

(f) Drug Abuse: Inmates are regularly involved in drug abuse within the facility, and the on-line employees are constantly under pressure to control it.

(g) Inadequate Training: The Department of Corrections has two missions: 1) to secure offenders, and 2) to rehabilitate them. Employees are given very little training in these two areas. With regard to security, employees largely learn by experience through high-stress situations. Also, they are not adequately trained to rehabilitate prisoners and fully expect to see released inmates back in prison a short time later.

5. Non-line employees do not experience many of these same aspects of working conditions. They work a standard 7:45 a.m. - 4:30 p.m. Monday - Friday shift. They do not have high rates of turnover, do not work a large amount of overtime, and are not inadequately trained for their jobs. Non-line employees generally perform the same tasks as their counterparts working in other State agencies. However, they work in an environment where the norm is danger, and they have some contact with the prison population (i.e. inmates have access to the office area where non-line employees work. Administrative Assistants go into the cell blocks to distribute checks to inmates. Account clerks give advice to the inmates about financial matters. Cooks supervise inmates assigned to work in the kitchen. Nurses attend to inmates.)

6. The proposed unit includes supervisory and non-supervisory correctional employees.

7. After negotiations between the Department of Personnel and VSEA, which were completed in mid-July, 1981, the following positions were agreed to be supervisory;

- Coordinator Treatment Services (1 position)
- Correctional Counselor Supervisor A ( 5 positions)
- Correctional Counselor Supervisor B (11 positions)
- Correctional Foreman C (1 position)
- Correctional Lieutenant (8 positions)
- Correctional Services Chief (1 position)
- Correctional Shift Supervisor (8 positions)
- Institutional Industry Program Chief (1 position)

8. Subsequent to this agreement, the Department of Corrections was reorganized. By memorandum dated September 22, 1981 (Exhibit C), Joseph Patrissi, Deputy Commissioner,

Department of Corrections, announced the implementation of the reorganization plan. As a result of the reorganization, many of the above-agreed to supervisory positions were reclassified.

9. On January 15, 1982, the Department of Personnel notified the VSEA of changes in the designation of positions in the Corrections Department as managerial, confidential, and supervisory (Additional Stipulation of Fact, February 1, 1982, Exhibit A). See 3 VSA §906. The following positions were designated supervisory:

- Correctional Foreman C (1 position)
- Institutional Industry Program Chief (1 position)
- Corrections Security and Operations Supervisor (6 positions)
- Casework Supervisor (5 positions)
- Correctional Facility Shift Supervisor (24 positions)

10. The Department of Personnel, as of February 1, 1982, had not notified Department of Corrections employees redesignated subsequent to the Department reorganization of their designations, or of the employees' rights to dispute the designation of their positions.

11. Superintendents of the six correctional facilities have the authority to discharge or suspend employees. Shift supervisors have the authority to reprimand employees. If an employee grieves the reprimand, the Superintendent will become involved through the grievance process. While practice varies, at some facilities shift supervisors do hear Step I grievances.

12. The proposed unit consists solely of employees who work in a correctional institution and excludes employees working in the Corrections Department's central office.

13. The Department of Corrections is a department within the Agency of Human Services. The Agency runs other institutions besides the correctional institutions; specifically 1) Vermont State Hospital, 2) Brandon Training School, and 3) SRS Juvenile Secure Detention Unit.

14. Vermont State Hospital treats the mentally ill. It operates on a 24 hour day, seven days a week basis. Employees work little overtime, and have a low rate of turnover. Employees have expressed complaints about understaffing, but unlike the Department of Corrections, the Hospital is subject to minimum staffing requirements imposed by regulations enforced by outside accreditation agencies. Employees are subject to physical attacks from some residents and have suffered injuries, but most residents are not dangerous and do not have hostility towards employees. An exception is Unit 1B, which is a secure unit and houses 12 residents considered dangerous. The Hospital also has a medium security unit (IIB). However, many residents can roam freely from unit to unit and can walk the grounds unattended.

15. Brandon Training School cares for and treats the mentally retarded. Brandon has a largely young population, including some adults who have limited mental ability. Brandon residents are not "locked up" and a campus-type atmosphere

exists. Residents do not generally have hostility towards employees. Employees do suffer some injuries. Brandon, like the Vermont State Hospital, must meet minimum staffing regulations required for Federal aid.

16. Injuries sustained by employees of the Hospital and Brandon are less severe than those suffered by correctional institution employees.

17. The present bargaining structure of VSEA provides that each of its units has its own bargaining team, with a Master Team made up of representatives of each of the units. Members of the teams are elected at VSEA's annual meeting.

18. No employees in the proposed unit are on either a unit team or the Master Team.

19. The collective bargaining agreement negotiated by the State and VSEA consists of a master agreement covering all employees and four supplemental unit agreements.

20. The existing structure of negotiations is that most of the bargaining is done on the master agreement, and towards the end of the bargaining period, separate unit agreements are then dealt with.

21. As a matter of union policy, collective bargaining agreements negotiated by VSEA must be ratified by all four bargaining units. In the event one unit fails to ratify the master contract and its unit contract, ratification of the entire "package" fails. In the history of collective bargaining between VSEA and the State, no contract has failed to be ratified.



22. In negotiations for the existing Agreement between the parties (effective July 1, 1981 - June 30, 1982), VSEA proposed correctional officers be provided hazardous duty pay. The State would not accept the concept of hazardous duty pay, and it was changed to a competency supplement employees would receive if they attended training sessions and performed adequately (Article 44 of Agreement).

23. Correctional employees have sought to have their concerns addressed in the negotiation process by contacting VSEA staff and bargaining team members. They are frustrated, though, because they believe their interests have been sacrificed in negotiations to the needs of the rest of the non-management unit and they believe their concerns can only be understood by employees actually working within the correctional institutions. As an example of this, they cite the negotiations history on Article 44 of the Agreement.

24. Besides input in negotiations, correctional employees have made other attempts to better their working conditions, including staging a "sickout" at Woodstock Correctional Center, picketing the State House, and phoning and visiting legislators. These attempts have been made without success.

25. Correctional employees believe their own unit would improve employee morale and enhance their ability to improve their working conditions by negotiating provisions such as better pay, more staffing, improved training, employee counseling, and "stress relief" days off.

26. The Corrections Department has made numerous unsuccessful attempts to obtain additional appropriations from the legislature for additional permanent classified positions. Correctional employees believe a separate Corrections Unit would provide a united front of management and employees to present proposals to the legislature.

#### OPINION

The issue before us is whether we should grant the VSEA petition for formation of a separate bargaining unit consisting of all correctional institution employees eligible to belong to a bargaining unit.

Relevant statutory provisions in unit determination cases are:

#### 3 VSA §902

(3) "Collective bargaining unit" means the employees of an employer, being either all of the employees, the members of a department or agency or such other unit or units as the board may determine are most appropriate to best represent the interest of employees.

#### §927 Appropriate Unit

(a) The board shall decide the unit appropriate for the purpose of collective bargaining in each case and those employees to be included therein, in order to assure the employees the fullest freedom in exercising the rights guaranteed by this chapter.

(b) In determining whether a unit is appropriate under subsection (a) of this section, the extent to which the employees have organized is not controlling.

(c) The board may decline recognition to any group of employees as a collective bargaining unit if, upon investigation and hearing, it is satisfied that the employees will not constitute an appropriate unit for

purposes of collective bargaining or if recognition will result in over-fragmentation of state employee collective bargaining units.

§941

(f) In determining the appropriateness of a collective bargaining unit the board shall take into consideration but not be limited to the following criteria:

(1) The authority of governmental officials at the unit level to take positive action on matters subject to negotiation.

(2) The similarity or divergence of the interests, needs, and general conditions of employment of the employees to be represented. The board may, in its discretion, require that a separate vote be taken among any particular class or type of employees within a proposed unit to determine specifically if the class or type wishes to be included.

(3) Whether over-fragmentation of units among state employees will result from certification to a degree which is likely to produce an adverse effect either on effective representation of state employees generally, or upon the efficient operation of state government.

This language demonstrates a clear legislative intent to allow employees the fullest freedom in selecting the composition of the unit which will best represent their interests as long as the unit is appropriate and will not result in over-fragmentation of units. 941(f) lists three specific criteria to consider in resolving unit determination questions. There is no contention Department of Corrections officials do not have authority to take positive action on matters subject to negotiation, so we need only consider the latter two criteria.

I. Similarity of the Interests, Needs and General Conditions of Employment of Employees

A. Inclusion of Non-Line Employees In Unit with On-Line Employees

The State contends non-line employees should not be placed in the proposed unit because the working conditions which gave rise to this petition are characteristic only of the on-line workers, and if they are included, their interests will be sacrificed to the dominant on-line employees. The State claims non-line employees have more of a community of interest with employees of the Non-Management unit.

We disagree. Admittedly, non-line employees perform generally the same functions and work the same hours as their counterparts elsewhere in State government. However, they work in an entirely different environment than those employees. They work in a high-pressure environment where they have contact with incarcerated persons - many considered violent. They share common interests with on-line employees, both being concerned with personal safety and inmate security in an environment where danger rules.

B. Inclusion of Supervisory Employees in the Same Unit with Non-Supervisory Employees

The petition before us includes both supervisory and non-supervisory employees. The State Employees Labor Relations Act prohibits supervisors being in the same unit as non-supervisory employees. 3 VSA §907 states:

Employees who are determined to be supervisory employees under the provisions of section 906 of this title shall become members of the supervisory unit.

3 VSA §906 provides:

The Commissioner of personnel shall determine those positions in the classified service whose incumbents he believes should be designated as managerial, supervisory or confidential employees. Any disputes arising therefrom shall be finally resolved by the Board.

In the case at hand, an agreement was reached between VSEA and the State as to what Corrections Department positions were supervisory. However, this agreement became void when the positions were reclassified in a Department reorganization, and the Department of Personnel redesignated the positions. Thirty-seven positions have been designated supervisory, but the Personnel Department has not notified employees of their designations and right to dispute them. Accordingly, these positions are in "limbo" as their designation is not final pursuant to 3 VSA §906. Among the 37 employees who have been tentatively designated supervisory are 24 Correctional Facility Shift Supervisors. It is evident these employees share a greater community of interest with the "front-line" correctional employees because of common working conditions than they do with supervisors throughout State government. On the existing state of facts, we are placing these employees in the proposed unit. If we have overlooked anything in this determination, the parties may bring it to our attention. (See VRCP 52.)

C. Inclusion of Department's Central Office Employees in Unit

The proposed unit consists solely of employees working in a correctional institution. It excludes employees working in the Correction Department's Central Office. The State contends the exclusion of such employees would mean Central Office employees would be in separate bargaining units (i.e. supervisory, non-management) from other Department employees; an example of the fragmentation caused by the separate unit. .

We find Central Office employees should not be included in the proposed unit because they do not share similar interests, needs, and general conditions of employment with employees working in the institutions themselves. The common factor binding institutional employees together is working in a prison environment where danger and a coercive atmosphere is a way of life; an employment condition not shared by Central Office workers.

D. Inclusion of Vermont State Hospital and Brandon Training School Employees in Unit

The State contends the proposed unit would result in overfragmentation because it does not include Brandon Training School and Vermont State Hospital employees who also work in institutional settings and have similar interests and needs.

We do not find Brandon and Hospital employees have similar interests and needs with correctional institution employees. First, the purposes of the respective institutions differ. Brandon and the State Hospital care for and treat the mentally ill and mentally retarded. The purposes of correctional institutions is to secure criminal offenders and attempt to rehabilitate them. Second, working conditions differ substantially. Brandon and State Hospital employees operate in an environment where patients are not generally dangerous and hostile to employees; unlike correctional institutions where danger is the norm. Moreover, Brandon and State Hospital employees have expressed no interest in being included within the proposed unit; demonstrating an apparent recognition by them of the distinction between working in a correctional institution and a mental health institution.

11 Overfragmentation

A. Adverse Effect of Proposed Unit on Effective Representation of State Employees Generally

In determining what effect the proposed unit would have on effective representation of State employees generally, it is imperative we look to bargaining history and bargaining structure.

Labor relations boards have shown reluctance to disturb existing overall units when bargaining in those

units has been successful over a period of time.  
International Association of Tool Craftsmen v. Leedom,  
276 F2d 514 (Court of Appeals, District of Columbia,  
1960), cert denied. 364 US 815 (1960). County of  
Schenectady and Sheriff and Schenectady County Sheriff's  
Benevolent Association, 13 PERB 4063 (Decision of Director,  
Public Employment Practices and Representation, New  
York Public Employment Relations Board, 1980).

In Schenectady, the Director stated:

As a general rule, when an employer favors retention of an established overall unit, evidence of a meaningful and effective history of negotiations for all unit employees can be a dispositive factor against fragmentation, even though the unit may contain a sub group which would have been placed, in the first instance, in a separate unit.

However, in the same decision which involved placing county deputy sheriffs in their own separate unit, the Director noted the conflict between law enforcement officers and other employees in an overall unit:

Another general rule recognizes that the primary commitment to law enforcement and the obvious hazards and risks creates a specific police community of interest which is likely to produce negotiating demands of little or no concern to other employees, and, therefore, put the two in conflict.

It is evident such a conflict exists here.  
Correctional employees have sought to have their unique concerns addressed in negotiations but their interests have apparently been traded off for provisions benefitting



the vast majority of the Non-Management Unit who do not share the same working conditions as correctional employees. The only evidence before us of a contractual provision specifically addressing the concerns of correctional employees is Article 44 - Corrections Competency Supplement. Other improvements which correctional employees view as necessary, such as improved training, "stress relief" days, employee counseling, and reduced overtime, have not been addressed in negotiations. This failure has not come from lack of initiative by Corrections employees who have expressed their concern to VSEA staff, bargaining team members, and legislators. Additionally, employees at the Woodstock Correctional Facility have even taken the extreme step of staging a "sickout". This bargaining history gives validity to the correctional employees' claim they are not being effectively represented in negotiations given the present unit setup.

Nonetheless, the State claims other State employees would not be effectively represented if correctional employees were granted their own unit. The State's concern seems unfounded. VSEA already represents the employees in the proposed unit, and would not have to divert existing money or staff time to represent employees in the new unit. As long as the present method of ratifying contracts is used by VSEA (i.e. all units must ratify, or there is no contract), it is unlikely VSEA would

sacrifice the interests of other employees to those of correctional employees, since the contract has to be "sold" to all employees.

The State contends that if the Corrections Unit was successful in gaining what they demanded in negotiations, a whipsaw effect would be generated; that other employees would agitate for similar provisions. We think this is unlikely. The working conditions characteristic of correctional employees - i.e. excessive overtime because of understaffing and turnover, undertraining, constant danger, high stress - arise out of the environment they work in, an environment distinct from any others in State government. Their concerns are not the concerns of other State employees.

We conclude the formation of a Corrections Unit would not have an adverse effect on representation of State employees generally.

B. Adverse Effect of Proposed Unit on Efficient Operation of State Government

The State argues the proposed unit will increase the time and funds the State must spend on negotiations because it would have to bargain an additional unit agreement. However, bargaining history reveals that most negotiating is done on the master agreement, and only towards the end of bargaining are separate unit agreements dealt with. One more unit agreement will not substantially increase negotiations cost or time.

The State raises the possibility of more grievances and other litigation arising out of the new unit which will multiply the time and costs for the parties as well as the Board itself. Grievances coming out of the Department of Corrections already occupy a substantial portion of the parties' and the Board's time, and there is no evident reason why more litigation would result from the creation of a Corrections Unit. In fact, it is conceivable the new unit may be instrumental in improving the conditions which cause many of the grievances which arise, thus reducing litigation.

The State submits that the addition of this unit would eventually invite raids by other unions, separating employees from VSEA which would weaken a strong central union and burden the State in terms of the costs of dealing with several unions. We have no institutional interest in assuring VSEA its continued status as exclusive representative of all State employees. Our task is to "assure employees the fullest freedom" in exercising their collective bargaining rights. 3 VSA §926(a). It is the employees' choice, not ours, who will be their bargaining representative. It is true the State may face some increased costs if it has to deal with several unions, but it is not apparent increased costs will be so substantial as to adversely affect the State's operation.

In conclusion, we believe the proposed unit of correctional institution employees, as modified herein, is most appropriate to represent the interests of those employees, and will not have an adverse effect on either the effective representation of State employees generally, or upon the efficient operation of State government.

ORDER

Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, it is hereby ordered:

1. A collective bargaining unit consisting of all employees of the six community correctional centers of the State of Vermont with the exception of employees designated managerial, supervisory, or confidential pursuant to 3 VSA §906, but including correctional facility shift supervisors, is appropriate, and
2. A secret ballot election shall be conducted by this Board pursuant to 3 VSA §941(e) and (g), on such date as the Board shall order, to determine whether or not these employees wish to be represented exclusively for collective bargaining purposes by the Vermont State Employees' Association, Inc., or no union.

Dated this 25 day of March, 1982, at Montpelier, Vermont

*Appealed to Sup. Ct.*

VERMONT LABOR RELATIONS BOARD

*Kimberly B. Cheney*  
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Kimberly B. Cheney, Chairman

*William G. Kemsley, Sr.*  
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William G. Kemsley, Sr.

*James S. Gilson*  
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James S. Gilson